

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BENSLEY CONSTRUCTION, INC.,
on its own behalf and on behalf
of all others similarly situated,

Plaintiff,

v.

MARSH & MCLENNAN
COMPANIES, INC., et al.

Defendants.

Civil Action No. 05 11249 GAO

PLAINTIFF'S MOTION TO REMAND

Plaintiff Bensley Construction, Inc. ("Plaintiff"), by and through its undersigned counsel of record, moves this Court, pursuant to the provisions of 28 U.S.C. §1447, for an order remanding this consumer class action, which is based entirely on state law claims, to the Superior Court for Essex County, Massachusetts. The Court should grant this Motion for the reasons set forth herein and in the accompanying Memorandum of Law.

No federal jurisdiction exists over this matter, as this action is not subject to the Class Action Fairness Act ("CAFA"), and the removing defendants cannot otherwise establish diversity jurisdiction. In addition, the removing defendants have not received the consent of all defendants to remove this matter. Accordingly, the removal of this action, based on purported diversity jurisdiction, was improper, and this action should be remanded.

In support of this Motion, Plaintiff submits the accompanying Memorandum in Support of Plaintiff's Motion to Remand.

WHEREFORE, Plaintiff respectfully requests that this action be remanded to the Superior Court for Essex County, Massachusetts.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

Undersigned counsel certify that they have conferred with counsel for the removing defendants in a good faith effort to resolve or narrow the issues raised by this Motion, but have been unable to do so.

DATED: July 21, 2005

Respectfully submitted,

GILMAN AND PASTOR, LLP

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